LOS/PCN/SCN.4/WP.15/Add.2
5 March 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEABED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 4

DRAFT REPORT OF THE PREPARATORY COMMISSION UNDER PARAGRAPH 10 OF RESOLUTION I CONTAINING RECOMMENDATIONS REGARDING PRACTICAL ARRANGEMENTS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Addendum

(Final draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany)

(LOS/PCN/SCN.4/WP.5/Rev.2)

Explanatory note

1. The final draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany contained herein was prepared pursuant to the decision of Special Commission 4 (LOS/PCN/L.101, para. 4). It constitutes addendum 2 to document LOS/PCN/SCN.4/WP.15 (Draft Report of the Preparatory Commission under paragraph 10 of resolution I containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea), as referred to in the introductory note thereto, first paragraph.

2. The present working paper takes into account the deliberations of the Special Commission, commencing with its consideration of the draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany (LOS/PCN/SCN.4/WP.5/Parts I and II), which was reviewed by the Special Commission during the 1987 summer meeting of the Preparatory Commission (27 July-21 August 1987) and at the sixth session (14 March-8 April 1988). The discussions are reflected in the Chairman's summaries (LOS/PCN/SCN.4/L.11 and Add.1).

3. At the request of the Special Commission, the Secretariat prepared a revision of the draft in the light of the discussions, taking into account the matters on which there was agreement, the views expressed and the suggestions made by delegations, including drafting suggestions handed to the Secretariat. The revised draft was issued as document LOS/PCN/SCN.4/WP.5/Rev.1.

4. That revised draft Headquarters Agreement was reviewed at the summer meeting of the Preparatory Commission (12-30 August 1991) and at the tenth session (24 February-13 March 1992).

5. The present document incorporates the results of those discussions, and the agreements and understandings reached by the Special Commission concerning the provisions of the revised draft Headquarters Agreement and the suggested redraft in LOS/PCN/SCN.4/1992/CRP.45. It is to be noted that the provision regarding authentic texts would depend on the final determination as to the official languages of the Tribunal.

CONTENTS

		Page
Article 1.	Use of terms	5
Article 2.	Juridical personality of the Tribunal	6
Article 3.	The Headquarters district	6
Article 4.	Law and authority in the Headquarters district	7
Article 5.	Inviolability of the Headquarters district	8
Article 6.	Vicinity of the Headquarters district	8
Article 7.	Protection of the Headquarters district	9
Article 8.	Immunity of the Tribunal, its property, assets and funds	9
Article 9.	Archives	9
Article 10.	Public services in the Headquarters district	10
Article 11.	Communications	10
Article 12.	Flag and emblem	11
Article 13.	Social security and pension funds	11
Article 14.	Exemption from taxes, customs duties and import or export restrictions	12
Article 15.	Funds and freedom from currency restrictions	13
Article 16.	Privileges, immunities, facilities and prerogatives	13
Article 17.	Members and officials of the Tribunal	13
Article 18.	Members ad hoc and experts appointed under article 289 of the Convention	14
Article 19.	Agents representing parties, counsel and advocates designated to appear before the Tribunal	15
Article 20.	Witnesses, experts and persons performing missions	16
Article 21.	Nationals and residents of the host country	17
Article 22.	Waiver	17
Article 23.	Laissez-passer, identity cards and notifications	18
Article 24.	Entry, transit and sojourn in the host country	18
Article 25.	Maintenance of security and public order	19

/...

CONTENTS (continued)

		Page
Article 26.	Responsibility, liability and insurance	19
Article 27.	Cooperation with the competent authorities	20
Article 28.	Notification	21
Article 29.	Supplemental agreements	21
Article 30.	Relationship between the Agreement and the Protocol	21
Article 31.	Settlement of disputes	21
Article 32.	Amendments	22
Article 33.	Entry into force	22
Annex.	[Site specifications]	23

FINAL DRAFT AGREEMENT BETWEEN THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA AND THE FEDERAL REPUBLIC OF GERMANY REGARDING THE HEADQUARTERS OF THE TRIBUNAL

THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA AND THE FEDERAL REPUBLIC OF GERMANY

HAVING REGARD to the United Nations Convention on the Law of the Sea, in particular to its annex VI, and that pursuant thereto, the seat of the International Tribunal for the Law of the Sea shall be in the Free and Hanseatic City of Hamburg in the Federal Republic of Germany,*

HAVING REGARD to the legal personality of the Tribunal and the provisions of the Protocol on Privileges and Immunities of the International Tribunal for the Law of the Sea,

HAVE AGREED AS FOLLOWS:

Article 1

Use of terms

For the purposes of this Agreement:

(a) "Convention" means the United Nations Convention on the Law of the Sea;

(b) "Statute" means the Statute of the International Tribunal for the Law of the Sea, annex VI of the Convention;

(c) "Rules" means the Rules of the International Tribunal for the Law of the Sea;

(d) "Protocol" means the Protocol on Privileges and Immunities of the International Tribunal for the Law of the Sea;

(e) "States Parties" shall have the same meaning as referred to in article 1 of the Convention;

(f) "Tribunal" means the International Tribunal for the Law of the Sea;

(g) "Authority" means the International Seabed Authority;

(h) "the host country" means the Federal Republic of Germany;

---

* See the requirement recorded in paragraph 38 of the Final Act of the Third United Nations Conference on the Law of the Sea (A/CONF.62/121) stating that the decisions on the sites of the Authority and the Tribunal had been taken by the informal plenary subject to the requirement that the States specified should have ratified the Convention by the time of its entry into force and should remain Parties to it thereafter.

(i) "Government" means the Government of the Federal Republic of Germany;

(j) "Competent authorities" means such Bund (federal), Länder (state), or local authorities in the Federal Republic of Germany as may be appropriate in the context and in accordance with the laws, regulations and customs of the Federal Republic of Germany, including the laws, regulations and customs of the Länder (State) and local authorities involved;

(k) "Member" means an elected member of the Tribunal as referred to in article 2 of the Statute and article 2 of the Rules;

(l) "Member ad hoc" means a person chosen under article 17 of the Statute for the purpose of a particular case;

(m) "officials of the Tribunal" means the Registrar and other members of the staff of the Registry;

(n) "expert" means a person called at the instance of a party to a dispute or at the instance of the Tribunal to present testimony in the form of expert opinions, based on his special knowledge, skills, experience or training;

(o) "expert appointed under article 289 of the Convention" means a person appointed in accordance with that article to sit with the Tribunal;

(p) "Headquarters district" means the area defined in article 3 of this Agreement;

(q) "international organization" means an intergovernmental organization.

Article 2

Juridical personality of the Tribunal

In accordance with its juridical personality the Tribunal has, in particular, the capacity:

(a) to contract;

(b) to acquire and dispose of movable and immovable property;

(c) to institute legal proceedings.

Article 3

The Headquarters district

1. The seat of the Tribunal shall be the Headquarters district, which shall comprise:

(a) the area with the building or buildings upon it, defined as such in the annex to this Agreement; and

(b) any other lands, buildings or part of buildings which may from time to time be included therein by supplementary agreement between the Tribunal and the competent authorities.

2. The area with the required building or buildings referred to in paragraph 1 (a), together with the installations, equipment, fittings and all other facilities therein which are required for the effective functioning of the Tribunal, shall be made available to it in accordance with the Additional Agreement concluded between the Tribunal and the Government.

Article 4

Law and authority in the Headquarters district

1. The Headquarters district shall be under the control and authority of the Tribunal, in accordance with this Agreement.

2. The Tribunal shall have the power to make regulations operative throughout the Headquarters district for the purpose of establishing therein the conditions in all respects necessary for the full execution of its functions. The Tribunal shall promptly inform the competent authorities of regulations thus enacted in accordance with this paragraph. No federal, state or local law or regulation of the host country which is inconsistent with a regulation of the Tribunal authorized by this paragraph shall, to the extent of such inconsistency, be applicable within the Headquarters district.

3. Any dispute between the Tribunal and the host country as to whether a regulation of the Tribunal is authorized by paragraph 2 or as to whether a federal, state or local law or regulation of the host country is inconsistent with any regulation of the Tribunal authorized by paragraph 2, shall be promptly settled by the procedure set out in article 31. Pending such settlement, the regulation of the Tribunal shall apply and the federal, state or local law or regulation of the host country shall be inapplicable in the Headquarters district to the extent that the Tribunal claims it to be inconsistent with the regulation of the Tribunal.

4. Except as otherwise provided in this Agreement or in the Protocol and subject to the provisions of paragraph 2 of this article, the laws and regulations of the host country shall apply in the Headquarters district.

5. Except as otherwise provided in this Agreement or in the Protocol, the courts or other competent authorities shall have jurisdiction, as provided in applicable laws, over acts done and transactions taking place in the Headquarters district.

6. The competent authorities, when dealing with cases arising out of or relating to acts done or transactions taking place in the Headquarters district, shall take into account the regulations enacted by the Tribunal under this article.

Article 5

Inviolability of the Headquarters district

1. The Headquarters district shall be inviolable. No officer or official of the host country or other person exercising any public authority within the host country shall enter the Headquarters district to discharge any official duty except upon the express consent of or at the request of the President or Acting President of the Tribunal and in accordance with conditions approved by him.

2. Judicial actions and the service or executions of legal process, including the seizure of private property, cannot be enforced in the Headquarters district except with the consent of and in accordance with conditions approved by the President or Registrar of the Tribunal.

3. In case of fire or other emergency requiring prompt protective action, or in the event that the competent authorities have reasonable cause to believe that such an emergency has occurred or is about to occur in the Headquarters district, the consent of the President of the Tribunal to any necessary entry of the Headquarters district shall be presumed if neither the President nor the Registrar can be reached in time.

4. Subject to paragraphs 1 and 3, the competent authorities shall take the necessary action to protect the premises of the Tribunal against fire or other emergency.

5. Without prejudice to the Convention, this Agreement and the Protocol, the Tribunal shall not allow the Headquarters district to become a refuge from justice for persons against whom a penal judgment had been made or who are pursued flagrante delicto, or against whom a warrant of arrest or an order of extradition, expulsion or deportation has been issued by the competent authorities.

6. Subject to paragraphs 1 and 2, nothing in this article shall preclude the official delivery by the postal service, to the Headquarters district, of letters and documents.

7. The Tribunal may expel or exclude persons from the Headquarters district for violation of its regulations adopted under article 4.

Article 6

Vicinity of the Headquarters district

1. The competent authorities shall take all reasonable measures to ensure that the amenities of the Headquarters district are not impaired and that the use for which the Headquarters district is intended is not obstructed by the use made of the land and buildings in the vicinity of the Headquarters district.

2. The Tribunal shall ensure that the Headquarters district is not used for other purposes than for which it is intended and shall take all reasonable

measures to ensure that the land and buildings in its vicinity are not unreasonably obstructed.

Article 7

Protection of the Headquarters district

1. The competent authorities shall take whatever measures may be necessary to ensure that the Tribunal shall not be dispossessed of all or any part of the Headquarters district without the express consent of the Tribunal.

2. The competent authorities shall exercise due diligence to ensure that the tranquillity of the Headquarters district is not disturbed by the unauthorized entry of persons or groups of persons from outside or by disturbances in the immediate vicinity and shall provide to the Headquarters district the appropriate protection as may be required for these purposes.

3. The competent authorities shall provide the police or security forces necessary for the preservation of law and order in the Headquarters district and the removal therefrom of persons, if so requested by a duly authorized official of the Tribunal.

Article 8

Immunity of the Tribunal, its property, assets and funds

1. The Tribunal shall enjoy immunity from legal process, except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

2. The property, assets and funds of the Tribunal, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, seizure, expropriation or any other form of interference, whether by executive, administrative, judicial or legislative enforcement action.

3. The property and assets of the Tribunal shall be exempt from restrictions, regulations, controls and moratoria of any nature.

4. The immunities referred to in this article shall not extend to an action for damages arising from an accident involving a vehicle the use of which may have entailed the liability of the Tribunal to the extent that those damages are not recoverable from insurance. Pursuant to the laws and regulations of the host country, the Tribunal shall be required to have insurance coverage against third-party risks in respect of vehicles owned or operated by it.

Article 9

Archives

The archives and documents of the Tribunal shall be inviolable at all times and wherever they may be located in the host country. The location of

the archives of the Tribunal shall be made known to the competent authorities if it is at a place other than in the Headquarters district.

Article 10

Public services in the Headquarters district

1. The competent authorities shall do their utmost to ensure, in accordance with the request made by a duly authorized official of the Tribunal, and on equitable terms, the provision of the public services needed by the Tribunal, such as postal, telephone and telegraph services, electricity, water, gas, sewerage, collection of waste, fire protection, local transportation and cleaning of public streets.

2. In case of interruption or threatened interruption of any such services, the competent authorities shall consider the needs of the Tribunal as being of equal importance with the needs of the essential agencies and organs of the Federal Government and of the constitutional organs of the Free and Hanseatic City of Hamburg and will take steps accordingly to ensure that the work of the Tribunal is not impaired.

3. Upon request of the competent authorities, a duly authorized official of the Tribunal shall make suitable arrangements to enable duly authorized representatives of the appropriate public services to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers within the Headquarters district under conditions which shall not unreasonably disturb the carrying out of the functions of the Tribunal. Underground constructions may be undertaken by the competent authorities within the Headquarters district only after consultation with an authorized official of the Tribunal, and under conditions which shall not disturb the carrying out of the functions of the Tribunal.

4. In cases where gas, electricity or water are supplied by the competent authorities or where the prices thereof are under their control, the Tribunal shall be supplied at rates which shall not exceed the lowest comparable rates accorded to the Federal or local governmental or administrative authorities.

Article 11

Communications

1. The Tribunal shall enjoy, as far as compatible with the international treaties, regulations and arrangements to which the host country is a party, for its official communications treatment not less favourable than that accorded by the host country to Federal and local authorities or to international organizations and diplomatic missions, in the matter of priorities and rates for mail, cables, telegrams, radiograms, telex, facsimile, telephotos, television, telephone and other forms of communications as well as press rates for information to press and radio.

2. The competent authorities shall secure the inviolability of all communications and correspondence directed to the Tribunal, or to any of its officials in the Headquarters district, as well as all outgoing communications

and correspondence of the Tribunal, by whatever means or in whatever form transmitted, and they shall be immune from censorship or any other form of interference with their privacy. Such inviolability shall extend, without limitation by reason of this enumeration, to publications, still and moving pictures, films and sound or videotape recordings.

3. The Tribunal shall have the right to use codes and to dispatch and receive correspondence and other materials or communications by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.

4. If so requested by a duly authorized official of the Tribunal, the competent authorities shall provide for the official purposes of the Tribunal appropriate radio and other telecommunications facilities. These facilities may be specified by supplementary agreement between the Tribunal and the competent authorities.

5. Subject to the necessary authorization by the Meeting of States Parties and with the agreement of the Government as may be included in a supplementary agreement, the Tribunal may also establish and operate at the Headquarters district:

(a) its own short-wave sending and receiving radio broadcasting facilities (including emergency link equipment) which may be used on the same frequencies (within the tolerance prescribed for the broadcasting service by applicable regulations of the host country) for radiograph, radiotelephone and similar services;

(b) such other radio facilities as may be specified by supplementary agreement between the Tribunal and the competent authorities.

6. The Tribunal shall have the right to publish and broadcast freely and without restriction within the host country for purposes in conformity with the Convention and its Statute.

Article 12

Flag and emblem*

The Tribunal shall be entitled to display its flag and emblem in the Headquarters district and on vehicles used for official purposes.

Article 13

Social security and pension funds

1. The Tribunal, its Members and officials shall be exempt from all compulsory contributions to the social security scheme of the host country in the event that they do not participate in such scheme, if they are covered by a

---

* A relevant decision on the flag and emblem of the Tribunal will have to be taken by the Meeting of States Parties.

social security scheme providing adequate benefits for them in accordance with international practice.

2. Voluntary participation in the national social security scheme of the host country shall be in accordance with the laws of the host country.

3. Any pension fund established by the Tribunal with separate property and assets shall have legal capacity in accordance with the laws of the host country if the Tribunal so requests, and shall enjoy the same exemptions, immunities and privileges as the Tribunal itself.

Article 14

Exemption from taxes, customs duties and import or export restrictions

1. The Tribunal, its assets, income and other property, and its operations and transactions shall be exempt from all direct taxes; it is understood, however, that the Tribunal shall not claim exemption from taxes which are no more than charges for public utility services. Direct taxes shall be considered to be all taxes whether levied directly by the Federal Government, by a Land (State) or any other regional or local authority and such taxes shall, in particular, include income tax or corporate tax, trade tax, property tax and land tax. The motor vehicles belonging to or operated by the Tribunal shall, upon notification, be exempted from motor vehicle tax.

2. The Tribunal shall be exempt from all customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Tribunal for its use. Goods imported or purchased under such an exemption shall not be sold or otherwise disposed of in the territory of the host country, except under conditions agreed with the competent authorities. The Tribunal shall also be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of its publications.

3. In the purchase of goods or services necessary for the official activities of the Tribunal, when the price of such goods or services includes taxes or duties, the Government shall grant exemption from such taxes or duties or provide for their reimbursement.

4. The salaries, allowances and compensation paid to Members, Members ad hoc and the Registrar of the Tribunal shall be exempt from taxation in accordance with article 18, paragraph 8, of the Statute. The salaries and emoluments paid to the other officials of the Tribunal shall also be exempt from taxation consistent with the established practice of the United Nations.*

---

* The Staff Regulations and Rules of the United Nations make provision for a staff assessment.

Article 15

Funds and freedom from currency restrictions

1. Without being restricted by financial controls, regulations or moratoria of any kind, whilst carrying out its activities:

(a) the Tribunal may receive and hold funds or currency of any kind and operate accounts in any currency;

(b) the Tribunal shall be free to transfer its funds, securities or currency from one country to another or within any country and to convert any currency held by it into any other currency;

(c) the Tribunal may receive, hold, negotiate, transfer, convert or otherwise deal with bonds and other financial securities.

2. In exercising its rights under paragraph 1, the Tribunal shall pay due regard to any representations made by the competent authorities in so far as it is considered that effect can be given to such representations without detriment to the interests of the Tribunal.

Article 16

Privileges, immunities, facilities and prerogatives

The privileges, immunities, facilities and prerogatives of the individuals referred to in articles 17 to 20 are granted in the interests of the administration of justice by the Tribunal in order to safeguard the independent performance of their official functions and not for the personal benefit of the individuals themselves.

Article 17

Members and officials of the Tribunal

1. Subject to the provisions of this Agreement, the privileges and immunities to be accorded to Members and officials of the Tribunal within the territory of the host country shall be consistent with those accorded to diplomatic agents in accordance with the Vienna Convention on Diplomatic Relations of 18 April 1961, and in particular they shall be accorded privileges, immunities, facilities and prerogatives as follows:

(a) The Members of the Tribunal shall be entitled to the same privileges, immunities, facilities and prerogatives as the host country accords to heads of diplomatic missions accredited to the host country. The treatment accorded to Members shall also be accorded to the Registrar of the Tribunal and to the Deputy Registrar or any other official of the Tribunal when acting as Registrar;

(b) The Deputy Registrar of the Tribunal shall be entitled to the same privileges, immunities, facilities and prerogatives as are accorded to counsellors attached to diplomatic missions in the host country;

(c) The other officials of the Tribunal shall be entitled to the same privileges, immunities, facilities and prerogatives as the host country accords to officials of comparable rank attached to diplomatic missions in the host country.

2. The spouses and dependent relatives forming part of the household of Members of the Tribunal, the Registrar and the officials of the Tribunal shall receive the same treatment as the Member or official concerned.

3. The domestic staff of the Members and officials of the Tribunal, if they are not nationals or permanent residents of the host country, shall be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the host country However, the host country must exercise its jurisdiction over such persons in such a manner as not to interfere unduly with the performance of the functions of the Tribunal.

4. The Members of the Tribunal shall enjoy the treatment provided for in this article even after the expiry of their terms of office, if they continue to exercise their functions.

5. In order to secure complete freedom of speech and complete independence in the discharge of their duties, the Members and officials of the Tribunal shall continue to enjoy immunity from legal process in respect of words spoken and written and all acts done by them in the discharge of their duties even when they are no longer engaged in the business of the Tribunal.

6. Members and officials shall be given, together with their spouses and dependent relatives forming part of their household, the same repatriation facilities in time of international crises as diplomatic agents are given under the Vienna Convention on Diplomatic Relations of 18 April 1961 and international law.

7. The provisions of paragraphs 1 and 2 shall be applicable irrespective of the relations existing between the Government of which such an individual is a national and the host country.

Article 18

Members ad hoc and experts appointed under article 289 of the Convention

The privileges, immunities, facilities and prerogatives accorded to Members of the Tribunal, their spouses and dependent relatives forming part of their household and domestic staff, in accordance with article 17, shall apply, mutatis mutandis, to Members ad hoc and experts appointed under article 289 of the Convention in the discharge of their duties and to their spouses and dependent relatives forming part of their household and domestic staff while such Members ad hoc and experts are exercising their functions. The provisions of article 17, paragraph 5, shall apply mutatis mutandis to Members ad hoc and experts appointed under article 289 of the Convention even when they are no longer engaged in the business of the Tribunal.

Article 19

Agents representing parties, counsel and advocates designated to appear before the Tribunal

1. Agents representing parties to proceedings before the Tribunal as well as counsel and advocates appearing before it shall, without prejudice to paragraph 2, be accorded the privileges, immunities and facilities necessary for the independent exercise of their duties during their journey to and from the Headquarters district, and while exercising their functions. They shall be accorded:

(a) immunity from any form of personal arrest, search or detention and from seizure of their personal baggage;

(b) exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host country. An inspection in such a case shall be conducted in the presence of the agent, counsel or advocate concerned;

(c) immunity from legal process of every kind in respect of words spoken and written and all acts done by them while discharging their duties as representatives of parties before the Tribunal, which immunity shall continue even after they have ceased to exercise their functions;

(d) inviolability of documents and papers;

(e) the right to receive papers or correspondence by courier or in sealed bags;

(f) exemption in respect of themselves and their spouses from immigration restrictions or alien registration;

(g) the same facilities in respect of their personal baggage and in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

(h) the same repatriation facilities in time of international crises as are accorded to diplomatic agents under the Vienna Convention on Diplomatic Relations of 18 April 1961 and international law.

2. The representatives of States Parties who may be agents, counsel or advocates appearing before the Tribunal shall, notwithstanding anything to the contrary in paragraph 1, enjoy the privileges, immunities, facilities and prerogatives which, in accordance with the Vienna Convention on Diplomatic Relations of 18 April 1961 and international law, are accorded to diplomatic agents.

3. For the purposes of paragraph 1, parties to proceedings before the Tribunal shall include States other than States Parties, entities other than States, the Authority, natural persons and juridical persons and sponsoring States or entities substituted for parties to proceedings in accordance with article 190 of the Convention.

4. The provisions of paragraphs 1 and 2 shall be applicable irrespective of the relations existing between the Government of which such an individual is a national and the host country.

5. Upon receipt of notification from parties to proceedings before the Tribunal as to the appointment of an agent, counsel or advocate, a certification of the status of such representative shall be provided under the signature of the Registrar and limited to a period reasonably required for the proceedings.

6. The Registrar shall notify the competent authorities of the appointment of authorized agents, counsel or advocates of parties, indicating the prospective period for which their presence in and travel within the host country will be required.

7. The competent authorities shall accord the privileges, immunities, facilities and prerogatives to agents, counsel and advocates provided in this article upon production of the certification referred to in paragraph 5.

Article 20

Witnesses, experts and persons performing missions

1. Witnesses, experts and persons performing missions by order of the Tribunal shall be accorded the privileges, immunities and facilities necessary for the independent exercise of their functions, while on mission and during their journey to and from the Headquarters district. In particular, they shall be accorded the privileges, immunities and facilities accorded to agents, counsel and advocates under article 19, paragraph 1, subparagraphs (a) to (h).

2. Witnesses and experts appointed pursuant to article 67 of the Rules and persons performing missions shall be accorded the same privileges and immunities as are accorded to agents, counsel and advocates under article 19, paragraph 1, provided that a witness or expert who is a diplomatic agent of a State Party shall be accorded the same treatment accorded to agents, counsel or advocates who are diplomatic agents under article 19, paragraph 2.

3. The Federal, state or local authorities of the host country shall not impose any impediment to the transit to and from the Headquarters district of persons invited to the Headquarters district by the Tribunal on official business. The competent authorities shall afford any necessary protection to such persons while in transit to or from the Headquarters district. Such persons shall mutatis mutandis enjoy the privileges, immunities and facilities accorded to persons performing official missions for the Tribunal in accordance with this article.

4. The provisions of paragraphs 1 and 2 shall be applicable irrespective of the relations existing between the Government of which such an individual is a national and the host country.

Article 21

Nationals and residents of the host country

1. The members and officials of the Tribunal and persons referred to in articles 17 to 20 who may be nationals or residents of the host country are not subject to the local jurisdiction in respect of words spoken or written and any act performed by them in their official capacity and within the scope of their duties.

2. Nationals or residents of the host country who are officials of the Tribunal of whatever rank are exempt from direct taxation on the remunerations paid to them from the Tribunal's budget in accordance with article 14, paragraph 4.

Article 22

Waiver

1. A State Party not only has the right but is under a duty to waive the immunity of its representatives referred to in article 19, paragraph 2, and of witnesses and experts referred to in article 20, paragraph 2, who are diplomatic agents of a State Party, in any case where in the opinion of the State Party the immunity would impede the course of justice and it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded.

2. The right and the duty to waive immunity of representatives of parties who may be agents, counsel or advocates appearing before the Tribunal and witnesses or experts appearing at the instance of such parties, other than diplomatic agents of a State Party, shall lie with the Tribunal, after hearing the individual concerned, by a unanimous decision of its available Members and where, in its opinion, the immunity is not directly related to or incidental to the performance of official functions and would impede the course of justice and it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded.

3. The right and the duty to waive immunity of the Registrar or Deputy Registrar or any other official of the Tribunal when acting as Registrar and of experts appointed under article 289 of the Convention, shall lie with the Tribunal, after hearing the individual concerned, by a unanimous decision of its available Members and where, in its opinion, the immunity is not directly related to or incidental to the performance of official functions and would impede the course of justice and it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded.

4. The right and the duty to waive immunity of witnesses appearing at the instance of, and experts and persons performing missions by order of, the Tribunal, and invitees, referred to in article 20, paragraphs 1 and 3, shall lie with the Tribunal, after hearing the individual concerned, by a unanimous decision of its available Members and where, in its opinion, the immunity is not directly related to or incidental to the performance of official functions and would impede the course of justice and it can be waived without prejudice

to the administration of justice by the Tribunal and the purpose for which the immunity is accorded.

5. The right and the duty to waive immunity of the Deputy Registrar or other officials of the Tribunal and members of their households, shall lie with the Registrar, with the President's approval and after hearing the individual concerned, and where, in the Registrar's opinion, the immunity is not directly related to or incidental to the performance of official functions and would impede the course of justice and it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded.

Article 23

Laissez-passer, identity cards and notifications*

1. The competent authorities recognize and accept laissez-passer issued by the Tribunal to the Members and officials of the Tribunal as valid travel documents, taking into account the provisions of article 24, paragraph 4.

2. The Registrar shall, on behalf of the Tribunal, furnish persons referred to in articles 18 to 20 with an identity card stating the name, date and place of birth and the number of passport or number of national identity card and bearing a photograph and signature of the person concerned. This identity card shall serve to identify the holder and his official capacity in relation to the Tribunal, to the competent authorities. In the case of a stateless person, the travel documents issued by a State will for the purpose of this paragraph be treated as a passport or a national identity card.

3. The Registrar shall notify the competent authorities when any person mentioned in article 17 takes up or relinquishes his duties, and shall periodically send the competent authorities a list of all such persons with information as to the name, date and place of birth, nationality, home address, functions before the Tribunal and the anticipated duration of service.

4. The Registrar shall notify the competent authorities of the nomination of agents, counsel and advocates referred to in article 19. When attendance before the Tribunal by a person referred to in articles 19 and 20 is required, the Registrar shall notify the competent authorities immediately. This information shall state the name, date and place of birth and home address of the person concerned as well as his functions before the Tribunal and the anticipated duration of his functions.

Article 24

Entry, transit and sojourn in the host country

1. The competent authorities shall take all necessary measures to facilitate the entry into and sojourn in the host country, and shall place no impediment

---

* In the event that arrangements are entered into with the United Nations for the issuance of laissez-passer of the United Nations, the Tribunal may not need to issue its own laissez-passer.

in the way of departure from the host country, of the persons referred to in articles 17 to 20 and also ensure them the necessary protection. The competent authorities shall ensure that no impediment is placed in the way of their transit to or from the Headquarters seat and shall afford them the necessary protection.

2. Paragraph 1 of this article shall not apply in the case of general interruptions of transportation, and shall not impair the effectiveness of generally applicable laws relating to the operation of means of transportation.

3. Visas which may be required by persons referred to in articles 17 to 20 shall be granted without charge and as promptly as possible.

4. Applications for visas (where required) from the Members of the Tribunal and the Registrar should be dealt with as speedily as possible. All other holders of laissez-passer should receive the same facilities when their applications for visas are accompanied by a certificate that they are travelling on the business of the Tribunal. In addition, all holders of laissez-passer should be granted facilities for speedy travel.

5. Similar facilities to those specified in paragraph 4 should be accorded to witnesses, experts and other persons who, though not the holders of laissez-passer delivered by the Tribunal, have a certificate that they are travelling on the business of the Tribunal.

6. No activity performed by any person referred to in articles 17 to 20 in his official capacity with respect to the Tribunal shall constitute a reason for preventing his entry into or his departure from the territory of the host country or for requiring him to leave such territory.

7. It is understood that the persons referred to in articles 17 to 20 are not exempt from any reasonable application of the internationally accepted rules governing quarantine and public health.

Article 25

Maintenance of security and public order

1. Nothing in this Agreement shall affect the right of the host country to take, with the approval of the President of the Tribunal, the precautions necessary for its security or for the maintenance of public order.

2. If the host country considers it necessary to apply paragraph 1 of this article, it shall approach the Tribunal as rapidly as circumstances allow in order to determine by mutual agreement the measures necessary to protect the Tribunal.

Article 26

Responsibility, liability and insurance

1. The host country shall not incur by reason of the location of the Headquarters seat of the Tribunal within its territory any international

responsibility for acts or omissions of the Tribunal or of its officials acting or abstaining from acting within the scope of their functions other than the international responsibility which the host country would incur as a State Party.

2. Without prejudice to its immunities under this Agreement or the Protocol, the Tribunal shall carry insurance to cover liability for any injury or damage arising from the activities of the Tribunal in the host country or from its use of the Headquarters site or buildings erected thereon or vehicles owned or operated by it, that may be suffered by persons other than officials of the Tribunal, or by the Government. To this end, the competent authorities shall secure for the Tribunal, at reasonable rates, insurance coverage permitting claims to be submitted directly to the insurer by parties suffering injury or damage. Such claims and liability shall, without prejudice to the privileges and immunities of the Tribunal, be governed by the laws of the host country.

Article 27

Cooperation with the competent authorities

1. The Tribunal shall cooperate at all times with the competent authorities to facilitate to the extent possible the proper administration of justice, secure the observance of police regulations and prevent any abuse in connection with the privileges, immunities and facilities accorded to officials of the Tribunal referred to in article 17, paragraph 1, subparagraphs (b) and (c), and paragraphs 2 and 3, and the persons referred to in articles 18 to 20.

2. If the Government considers that there has been an abuse of privilege or immunity conferred by this Agreement, consultations will be held between the competent authorities and the President of the Tribunal to determine whether any such abuse has occurred and, if so, to attempt to ensure that no repetition occurs. If such consultations fail to achieve a result satisfactory to the Government and to the Tribunal, either party may submit the question as to whether such an abuse has occurred for resolution in accordance with the provisions on settlement of disputes under article 31.

3. The Government may only require persons referred to in articles 17 to 20, other than Members, Members ad hoc, the Registrar or the Deputy Registrar or any other official when acting as Registrar or representatives of States Parties, to leave the country on account of any activities performed by them which are an abuse of the right of residence in the host country and are not directly related to, or incidental to the performance of, official functions, with the approval of the Secretary of State for External Affairs of the Federal Republic of Germany, after consultation with the Registrar in the case of officials of the Tribunal, and the President of the Tribunal in the case of the other persons herein referred to. Representatives of States Parties other than agents, representing such States Parties in proceedings before the Tribunal may only be required to leave the country in accordance with the diplomatic procedure applicable to diplomatic agents accredited to the Federal Republic of Germany.

Article 28

Notification

In any case where this Agreement requires a notification by the Tribunal or by the President, such notification may be issued by the Acting President, in the absence of the President, or by any duly authorized official of the Tribunal, unless otherwise specified.

Article 29

Supplementary agreements

The Tribunal and the Government of the Federal Republic of Germany may conclude supplementary agreements to this Agreement so far as this is deemed desirable.

Article 30

Relationship between the Agreement and the Protocol

The provisions of this Agreement shall be complementary to the provisions of the Protocol. In so far as any provision of this Agreement and any provisions of the Protocol relate to the same subject-matter, the two provisions shall, wherever possible, be treated as complementary, so that both provisions shall be applicable and neither shall narrow the effect of the other; but in case of conflict, the provisions of this Agreement shall prevail.

Article 31

Settlement of disputes

1. The Tribunal shall make suitable provisions for the satisfactory settlement of:

(a) disputes arising out of contracts and disputes of a private law character to which the Tribunal is a party;

(b) disputes involving any person within the scope of article 27, paragraph 3, who by reason of his official position enjoys immunity, if immunity has not been waived in accordance with article 22.

2. Any dispute between the Tribunal and the competent authorities arising out of or concerning the interpretation or application of this Agreement or of any supplemental agreement, or any question affecting the Headquarters or the relationship between the Tribunal and the Government which is not settled by consultation, negotiation or other agreed mode of settlement, shall be referred, at the request of either party to the dispute, for a final and binding decision to a panel of three arbitrators, one to be chosen by the Tribunal, one to be chosen by the Government, and the third, who shall be the Chairman of the panel, to be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the appointment of the third member

within three months following the appointment of the first two arbitrators, the Chairman shall be chosen by the Secretary-General of the United Nations within one month of the request of the Tribunal or the Government. If either party to this Agreement has failed to make its appointment of an arbitrator within two months of the appointment of an arbitrator by the other party, the Secretary-General of the United Nations shall make such appointment within one month thereafter.

Article 32

Amendments

The provisions of this Agreement may only be amended by agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany.

Article 33

Entry into force

This Agreement shall enter into force, following its signature on behalf of the International Tribunal for the Law of the Sea and on behalf of the Federal Republic of Germany, thirty days after the Federal Republic of Germany has notified the President of the Tribunal that the internal constitutional requirements for the entry into force of this Agreement have been fulfilled.

DONE and signed at _____ in duplicate, in the English, French and German languages, all language texts being equally authentic, on this ____ day of _____, 19___.

Annex

[Specifications as to site, buildings, etc.]

LOS/PCN/SCN.4/WP.15/Add.3
5 March 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 4

DRAFT REPORT OF THE PREPARATORY COMMISSION UNDER PARAGRAPH 10 OF RESOLUTION I CONTAINING RECOMMENDATIONS REGARDING PRACTICAL ARRANGEMENTS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Addendum

(Final draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea)

(LOS/PCN/SCN.4/WP.6/Rev.2)

Explanatory note

1. The final draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea contained herein was prepared pursuant to the decision of Special Commission 4 (LOS/PCN/L.101, para. 5). It constitutes addendum 3 to document LOS/PCN/SCN.4/WP.14 (draft outline for report of the Preparatory Commission under paragraph 10 of resolution I containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea), as referred to in the introductory note thereto, final paragraph.

2. The present working paper takes into account the deliberations of the Special Commission, commencing with its consideration of the draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.6), which was reviewed by the Special Commission during the seventh session (27 February-23 March 1989) and the 1989 summer meeting of the Preparatory Commission (14 August-1 September 1989). The discussions are reflected in the Chairman's summaries of discussions (LOS/PCN/SCN.4/L.13 and Add.1).

3. At the request of the Special Commission, the Secretariat prepared a revision of the draft in the light of the discussions, taking into account the matters on which there was agreement, the views expressed, the suggestions made by delegations, including drafting suggestions handed to the Secretariat, the texts proposed for specific provisions (LOS/PCN/SCN.4/1989/CRP.31 and 33-35) and the compromise texts to be provided by the Secretariat as requested in LOS/PCN/L.91, paragraph 10. The revised draft was issued as document LOS/PCN/SCN.4/WP.6/Rev.1 and Corr.1 and 2.

4. That revised draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea was reviewed at the ninth session (25 February-22 March 1991), at the 1991 summer meeting of the Preparatory Commission (12 to 30 August 1991) and at the tenth session (24 February-13 March 1992).

5. The present document incorporates the results of those discussions, and the agreements and understandings reached by the Special Commission and the draft texts proposed for specific provisions (LOS/PCN/SCN.4/1991/CRP.41-44). In the revision of the text, to the extent possible it has been harmonized with the final draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany (LOS/PCN/SCN.4/WP.5/Rev.2).

CONTENTS

		Page
Article 1.	Use of terms	4
Article 2.	Juridical personality of the Tribunal	5
Article 3.	Inviolability of the premises of the Tribunal	5
Article 4.	Immunity of the Tribunal, its property, assets and funds	6
Article 5.	Archives	6
Article 6.	Exercise of the functions of the Tribunal outside the Headquarters	6
Article 7.	Communications	7
Article 8.	Exemption from taxes, customs duties and import or export restrictions	7
Article 9.	Reimbursement of duties and/or taxes	7
Article 10.	Taxation	8
Article 11.	Funds and freedom from currency restrictions	8
Article 12.	Members and ad hoc members of the Tribunal	8
Article 13.	Officials	10
Article 14.	Experts appointed under article 289 of the Convention	11
Article 15.	Agents representing parties, counsel and advocates designated to appear before the Tribunal	12
Article 16.	Witnesses, experts and persons performing missions	13
Article 17.	Respect for laws and regulations	13
Article 18.	Waiver	13
Article 19.	Laissez-passer	15
Article 20.	Freedom of movement	15
Article 21.	Maintenance of security and public order	15
Article 22.	Cooperation with the authorities of States Parties	16
Article 23.	Settlement of disputes	16
Article 24.	Final provisions	16

FINAL DRAFT PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

(Adopted by the Meeting of States Parties to the United Nations Convention on the Law of the Sea)

WHEREAS the United Nations Convention on the Law of the Sea provides for the establishment of the International Tribunal for the Law of the Sea in accordance with article 287, paragraph 1 (a), and the Statute of the Tribunal in annex VI thereof and

RECOGNIZING that the Tribunal shall enjoy in the territory of each State Party such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes and

RECOGNIZING ALSO that the Tribunal shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes and

WHEREAS the Statute of the Tribunal provides, in accordance with article 10 thereof, that the Members of the Tribunal, when engaged on the business of the Tribunal, shall enjoy diplomatic privileges and immunities and

RECOGNIZING that representatives of States Parties and of other parties to disputes or proceedings, officials and other functionaries of the Tribunal shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Tribunal;

CONSEQUENTLY the Meeting of States Parties to the Convention by a Resolution adopted on the ... approved the following Protocol and proposed it for accession by each State Party.

Article 1

Use of terms

For the purposes of this Protocol:

(a) "Convention" means the United Nations Convention on the Law of the Sea;

(b) "Statute" means the Statute of the International Tribunal for the Law of the Sea, annex VI of the Convention;

(c) "Rules" means the Rules of the International Tribunal for the Law of the Sea;

(d) "States Parties" means those States which have consented to be bound by the Protocol in accordance with article 24 thereof and for which the Convention is in force;

(e) "Tribunal" means the International Tribunal for the Law of the Sea;

(f) "Authority" means the International Seabed Authority;

(g) "Parties to proceedings" means States Parties, other States, entities other than States, the Authority, natural and juridical persons and sponsoring States or entities substituted for parties to proceedings in accordance with article 190 of the Convention;

(h) "Authorities of a State Party" means such authorities in the country of the State Party as may be appropriate in the context and in accordance with the laws, regulations and customs of that country, including the laws, regulations and customs of the local authorities involved;

(i) "Member" means an elected member of the Tribunal as referred to in article 2 of the Statute and article 2 of the Rules;

(j) "Member ad hoc" means a person chosen under article 17 of the Statute for the purpose of a particular case;

(k) "officials of the Tribunal" means the Registrar and other members of the staff of the Registry;

(l) "expert" means a person called at the instance of a party to a dispute or at the instance of the Tribunal to present testimony in the form of expert opinions, based on his special knowledge, skills, experience or training;

(m) "expert appointed under article 289 of the Convention" means a person appointed in accordance with that article to sit with the Tribunal;

(n) "functionary of the Tribunal" means any person referred to in articles 13, 14, 15 and 16 of this Protocol;

(o) "Vienna Convention" means the Vienna Convention on Diplomatic Relations of 18 April 1961.

Article 2

Juridical personality of the Tribunal

The Tribunal shall possess juridical personality. It shall have the capacity:

(a) to contract;

(b) to acquire and dispose of immovable and movable property;

(c) to institute legal proceedings.

Article 3

Inviolability of the premises of the Tribunal

The premises of the Tribunal shall be inviolable.

Article 4

Immunity of the Tribunal, its property, assets and funds

1. The Tribunal shall enjoy immunity from legal process, except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

2. The property, assets and funds of the Tribunal, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, seizure, expropriation or any other form of interference, whether by executive, administrative, judicial or legislative enforcement action.

3. The property and assets of the Tribunal shall be exempt from restrictions, regulations, controls and moratoria of any nature.

4. The immunities referred to in this article shall not extend to an action for damages arising from an accident involving a vehicle the use of which may have entailed the liability of the Tribunal to the extent that those damages are not recoverable from insurance. Pursuant to the laws and regulations of the host country, or the transit State, the Tribunal shall be required to have insurance coverage against third-party risks in respect of vehicles owned or operated by it.

Article 5

Archives

The archives and documents of the Tribunal shall be inviolable at all times and wherever they may be located.

Article 6

Exercise of the functions of the Tribunal outside the Headquarters

In the event that the Tribunal will sit and exercise its functions in accordance with article 1, paragraph 3, of the Statute:

(a) The State Party concerned shall provide the appropriate facilities in accordance with international practice, and upon request by the Tribunal the State Party shall, as soon as possible, conclude an arrangement with the Tribunal covering such matters;

(b) In the case where the State concerned is not a State Party, the Tribunal shall conclude with such State an arrangement concerning the provision of the appropriate facilities for the efficient exercise of its functions in accordance with international practice as well as the accord of privileges, immunities, facilities and prerogatives in accordance with this Protocol.

Article 7

Communications

1. For the purposes of its official communications, the Tribunal shall enjoy in the territory of each State Party treatment not less favourable than that which the State Party accords to any intergovernmental organization or diplomatic mission in the matter of priorities, rates and taxes applicable to mails and the various forms of communications.

2. The Tribunal may use all appropriate means of communications and make use of codes for its official communications. The States Parties shall not apply any censorship or any other form of interference of such communications.

3. The Tribunal shall have the right to dispatch and receive correspondence and other materials or communications by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.

Article 8

Exemption from taxes, customs duties and import or export restrictions

1. The Tribunal, its assets, income and other property, and its operations and transactions shall be exempt from all direct taxes; it is understood, however, that the Tribunal shall not claim exemption from taxes which are no more than charges for public utility services.

2. The Tribunal shall be exempt from all customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Tribunal for its official use. Goods imported or purchased under such an exemption shall not be sold or otherwise disposed of in the territory of a State Party, except under conditions agreed with the Government of that State Party. The Tribunal shall also be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of its publications.

Article 9

Reimbursement of duties and/or taxes

The Tribunal shall not, as a general rule, claim exemption from duties and taxes which are included in the price of movable and immovable property and taxes paid for services rendered. Nevertheless, when the Tribunal for its official use makes major purchases of property and goods or services on which duties and taxes are charged or are chargeable, States Parties shall make appropriate administrative arrangements for the reimbursement of the amount of duty and/or tax paid.

Article 10

Taxation

1. The salaries and emoluments paid to Members, Members ad hoc and the Registrar of the Tribunal shall be exempt from taxation in accordance with article 18, paragraph 8, of the Statute. The salaries and emoluments paid to the other officials of the Tribunal shall also be exempt from taxation consistent with the established practice of the United Nations. 1/

2. Where the incidence of any form of taxation depends upon residence, periods during which such Members or officials are present in a State for the discharge of their functions shall not be considered as periods of residence.

3. The Parties to this Protocol shall not be obliged to exempt from income tax pensions or annuities paid to former Members and former officials of the Tribunal.

Article 11

Funds and freedom from currency restrictions

1. Without being restricted by financial controls, regulations or financial moratoria of any kind, whilst carrying out its activities:

(a) the Tribunal may hold funds or currency of any kind and operate accounts in any currency;

(b) the Tribunal shall be free to transfer its funds or currency from one country to another or within any country and to convert any currency held by it into any other currency;

(c) the Tribunal may receive, hold, negotiate, transfer, convert or otherwise deal with bonds and other financial securities.

2. In exercising its rights under paragraph 1, the Tribunal shall pay due regard to any representations made by the Government of any State Party in so far as it is considered that effect can be given to such representations without detriment to the interests of the Tribunal.

Article 12

Members and Members ad hoc of the Tribunal

1. Members of the Tribunal, while exercising their functions in the territory of each State Party, shall, pursuant to article 10 of the Statute, enjoy the

---

1/ The Staff Regulations and Rules of the United Nations make provision for a staff assessment.

privileges, immunities and facilities as are accorded to heads of diplomatic missions accredited to that country. Such treatment shall include the privileges, immunities, facilities and prerogatives accorded to diplomatic agents in accordance with the Vienna Convention and international law.

2. Members of the Tribunal and their spouses and dependent relatives forming part of their households, shall be accorded every facility for leaving the country where they may happen to be and for entering and leaving the country where the Tribunal is sitting. On journeys in connection with the exercise of their functions, they shall in all countries through which they may have to pass enjoy all the privileges, immunities and facilities granted by these countries to diplomatic agents.

3. Members of the Tribunal, when holding themselves at the disposal of the Tribunal for the exercise of their functions, their spouses and dependent relatives forming part of their household shall be accorded diplomatic privileges and immunities during the period of their residence in any country other than that of which they are nationals or permanent residents, provided that in their own country or in any country of which they are permanent residents they enjoy privileges, immunities and facilities to the extent admitted by such State. The States concerned, however, must exercise their jurisdiction over those persons in such a manner as not to interfere with the functions of the Tribunal.

4. In order to secure, for Members, complete freedom of speech and independence in the discharge of their functions, the immunity from legal process in respect of words spoken and written and all acts done by them in discharging their functions shall continue to be accorded, notwithstanding that the persons concerned are no longer Members of the Tribunal or performing those functions.

5. Members shall be given, together with their spouses and dependent relatives forming part of their household, the same repatriation facilities in time of international crises as diplomatic agents are given under the Vienna Convention and international law.

6. Privileges, immunities, facilities and prerogatives are accorded to the Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Tribunal.

7. The provisions of paragraphs 1 and 2 shall be applicable irrespective of the relations existing between the Government of which such an individual is a national and the State Party concerned.

8. This article shall apply to Members even after the expiry of their terms of office if they continue to exercise their functions, in accordance with article 5, paragraph 3, of the Statute. It shall also apply mutatis mutandis to Members ad hoc.

Article 13

Officials

1. Officials of the Tribunal shall enjoy in any country where they may be on the business of the Tribunal, or in any country through which they may pass on such business, such privileges, immunities and facilities for residence and travel as may be necessary for the independent exercise of their functions. They shall:

(a) be immune from any form of personal arrest, search or detention and from seizure of their personal baggage;

(b) be exempted from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host country. An inspection in such a case shall be conducted in the presence of the official concerned;

(c) be immune from legal process in respect of words spoken or written and all acts performed by them while discharging their functions, which shall continue even after they have ceased to exercise their functions;

(d) be exempt from income tax on the salaries and emoluments paid to them by the Tribunal consistent with the established practice of the United Nations; 2/

(e) be immune from national service obligations;

(f) be exempted in respect of themselves and their spouses and dependent relatives forming part of their household from immigration restrictions or alien registration;

(g) be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable rank forming part of diplomatic missions to the Government concerned in accordance with international law and practice;

(h) have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question and to re-export the same free of duty to their country of domicile;

(i) be accorded, together with their spouses and dependent relatives forming part of their household, the same repatriation facilities in time of international crises as are accorded to diplomatic agents under the Vienna Convention and international law.

2. The Registrar and any official of the Tribunal, acting as Registrar, should, while on the business of the Tribunal, be accorded diplomatic privileges and immunities.

2/ The Staff Regulations and Rules of the United Nations make provision for a staff assessment.

3. The Registrar shall specify the categories of officials to which the provisions of this article shall apply. He shall submit these categories to the Tribunal. These categories shall also be communicated to the Governments of all States Parties. The names of the officials included in these categories shall from time to time be communicated to the Governments of States Parties.

4. The provisions of paragraph 1 shall be applicable irrespective of the relations existing between the Government of which such an individual is a national and the State Party concerned.

Article 14

Experts appointed under article 289 of the Convention

1. Experts appointed under article 289 of the Convention shall be accorded, during the period of their missions, including the time spent on journeys in connection with their missions, such privileges and immunities as are necessary for the independent exercise of their functions. They shall be accorded:

(a) immunity from any form of personal arrest, search or detention and from seizure of their personal baggage;

(b) exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host country. An inspection in such a case shall be conducted in the presence of the expert concerned;

(c) immunity from legal process of any kind in respect of words spoken or written and acts done by them while discharging their functions, which immunity shall continue even after they have ceased to exercise their functions;

(d) inviolability of documents and papers;

(e) exemption with respect to themselves, their spouses and dependent relatives forming part of their household, from immigration restrictions or alien registration;

(f) the same facilities in respect of currency and exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions.

2. Such experts shall be given, together with their spouses and dependent relatives forming part of their household, the same repatriation facilities in time of international crises as diplomatic agents are given under the Vienna Convention and international law.

Article 15

Agents representing parties, counsel and advocates designated to appear before the Tribunal

1. Agents representing parties to proceedings before the Tribunal as well as counsel and advocates designated to appear before it shall, without prejudice to paragraph 2, be accorded the privileges, immunities and facilities necessary for the independent exercise of their functions during their journey to and from the place where the Tribunal is sitting, and while exercising their functions. They shall be accorded:

(a) immunity from any form of personal arrest, search or detention and from seizure of their personal baggage;

(b) exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host country. An inspection in such a case shall be conducted in the presence of the agent, counsel or advocate concerned;

(c) immunity from legal process of every kind in respect of words spoken and written and all acts done by them while discharging their functions as representatives of parties before the Tribunal, which immunity shall continue even after they have ceased to exercise their functions;

(d) inviolability of documents and papers;

(e) the right to receive papers or correspondence by courier or in sealed bags;

(f) exemption in respect of themselves and their spouses from immigration restrictions or alien registration;

(g) the same facilities in respect of their personal baggage and in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

(h) the same repatriation facilities in time of international crises as are accorded to diplomatic agents under the Vienna Convention and international law.

2. The representatives of State Parties who may be agents, counsel or advocates appearing before the Tribunal shall, notwithstanding anything to the contrary in paragraph 1, enjoy the privileges, immunities, facilities and prerogatives which, in accordance with the Vienna Convention and international law, are accorded to diplomatic agents.

3. The provisions of paragraphs 1 and 2 shall be applicable irrespective of the relations existing between the Government of which such an individual is a national and the country in which such individual is present.

4. Upon receipt of notification from parties to proceedings before the Tribunal as to the appointment of an agent, counsel or advocate, a

certification of the status of such representative shall be provided under the signature of the Registrar and limited to a period reasonably required for the proceedings.

5. The competent authorities of the State concerned shall accord the privileges, immunities, facilities and prerogatives of agents, counsel and advocates provided in this article upon production of the certification referred to in paragraph 4.

6. Where the incidence of any form of taxation depends upon residence, periods during which such agents, counsel or advocates are present in a State for the discharge of their functions shall not be considered as periods of residence.

Article 16

Witnesses, experts and persons performing missions

1. Witnesses, experts and persons performing missions by order of the Tribunal shall be accorded, during the period of their mission, including the time spent on journeys in connection with their missions, the privileges, immunities and facilities necessary for the independent exercise of their functions. They shall be accorded the privileges, immunities and facilities accorded to experts appointed under article 289 of the Convention, as provided in article 14, paragraph 1, subparagraphs (a) to (f).

2. Witnesses, experts and such persons shall be provided with repatriation facilities in time of international crises.

Article 17

Respect for laws and regulations

Without prejudice to their privileges and immunities, it is the duty of all persons referred to in articles 12 to 16 to respect the laws and regulations of the State Party in whose territory they exercise official functions. They also have a duty not to interfere in the internal affairs of that State.

Article 18

Waiver

1. Privileges and immunities are accorded to persons referred in articles 13 to 16 not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Tribunal.

2. A State Party not only has the right but is under a duty to waive the immunity of its representatives referred to in article 15, paragraph 2, in any case where in the opinion of the State the immunity would impede the course of

justice and it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded.

3. The right and the duty to waive immunity of representatives of parties to proceedings before the Tribunal who may be agents, counsel or advocates appearing before the Tribunal and witnesses or experts appearing at the instance of such parties, other than diplomatic agents of a State Party, shall lie with the Tribunal, after considering the case of the individual concerned, by a unanimous decision of its available Members, and where, in its opinion, the immunity is not directly related to or incidental to the performance of official functions and would impede the course of justice and it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded. The Tribunal shall consult with the party that appointed such person or at whose instance the person appears before taking a decision.

4. The right and the duty to waive immunity of the Registrar or Deputy Registrar when acting as Registrar and of experts appointed under article 289 of the Convention, shall lie with the Tribunal, after considering the case of the individual concerned, by a unanimous decision of its available members, and where, in its opinion, the immunity is not directly related to or incidental to the performance of official functions and would impede the course of justice and it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded. In the case of agents, counsel or advocates referred to in this article, the Tribunal shall consult with the party appointing such person before taking a decision.

5. The right and the duty to waive immunity of witnesses appearing at the instance of, and experts and persons performing missions by order of the Tribunal, shall lie with the Tribunal, after considering the case of the individual concerned, by a unanimous decision of its available Members, and where, in its opinion, the immunity is not directly related to or incidental to the performance of official functions and would impede the course of justice and it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded.

6. The right and the duty to waive immunity of the Deputy Registrar or other officials of the Tribunal and <u>members of their households</u>, shall lie with the Registrar, with the President's approval and after considering the case of the individual concerned, and where, in the Registrar's opinion, the immunity is not directly related to or incidental to the performance of official functions and would impede the course of justice and it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded.

Article 19

Laissez-passer*

1. The Tribunal may issue laissez-passer to the Members and officials of the Tribunal. These laissez-passer shall be recognized and accepted as valid travel documents by the authorities of States Parties, taking into account the provisions of paragraph 2.

2. Applications for visas (where required) from the Members of the Tribunal and the Registrar shall be dealt with as speedily as possible. Applications from all other holders of laissez-passer issued by the Tribunal and from persons referred to in articles 14, 15 and 16, when accompanied by a certificate that they are travelling on the business of the Tribunal, shall be dealt with as speedily as possible.

Article 20

Freedom of movement

No administrative or other restrictions shall be imposed on the free movement of Members of the Tribunal, and other persons referred to in articles 12 to 16 of this Protocol, to and from the Headquarters of the Tribunal or the place where the Tribunal is sitting or exercising its functions.

Article 21

Maintenance of security and public order

1. If the State Party concerned considers it necessary to take, without prejudice to the independent and proper working of the Tribunal, precautions necessary for the security or for the maintenance of public order of the State Party in accordance with the norms of international law, it shall approach the Tribunal as rapidly as circumstances allow in order to determine by mutual agreement the measures necessary to protect the Tribunal.

2. The Tribunal shall cooperate with the Government of such State Party to avoid any prejudice to the security of the State Party resulting from its activities.

---

* In the event that arrangements are entered into with the United Nations for the issuance of laissez-passer of the United Nations, the Tribunal may not need to issue its own laissez-passer.

Article 22

Cooperation with the authorities of States Parties

The Tribunal shall cooperate at all times with the appropriate authorities of States Parties to facilitate the execution of their laws, including the observance of security regulations, and to prevent any abuse in connection with the privileges, immunities and facilities mentioned in this Protocol.

Article 23

Settlement of disputes

1. The Tribunal shall make suitable provisions for the proper settlement of:

(a) disputes arising out of contracts and other disputes of a private law character to which the Tribunal is a party;

(b) disputes involving any functionary of the Tribunal who by reason of his official position enjoys immunity, if such immunity has not been waived in accordance with article 18, paragraphs 3 to 6.

2. All differences arising out of the interpretation or application of this Protocol shall be referred to an arbitral tribunal in accordance with the following procedure unless the parties have agreed to another mode of settlement. If a difference arises between the Tribunal on the one hand and a State Party on the other hand, which is not settled by consultation, negotiation or other agreed mode of settlement within three months following such a request by one of the parties to the difference, it shall at the request of either party be referred for final decision to a panel of three arbitrators: one to be chosen by the Tribunal, one to be chosen by the State Party, and the third, who shall be Chairman of the panel, to be chosen by the first two arbitrators. If either party has failed to make its appointment of an arbitrator within two months of the appointment of an arbitrator by the other Party, the Secretary-General of the United Nations shall make such appointment. Should the first two arbitrators fail to agree upon the appointment of the third member within three months following the appointment of the first two arbitrators, the Chairman shall be chosen by the Secretary-General of the United Nations upon the request of the Tribunal or the State Party.

Article 24

Final provisions

1. This Protocol is open to every State Party to the Convention for accession.

2. Where a dispute has been submitted to the Tribunal in accordance with its Statute, any State other than a State Party which is a party to the dispute may, ad hoc for the purposes and duration of the proceedings relating thereto, become a party to this Protocol by the deposit of its instrument of accession.

3. Accession shall be effected by deposit of an instrument with the Secretary-General of the United Nations who shall promptly transmit a copy thereof to the Registrar of the Tribunal. This Protocol shall come into force as regards each State Party on the date of deposit of each instrument of accession, it being understood that the provisions of the Protocol as applicable to States Parties shall apply mutatis mutandis to such State.

4. The Secretary-General of the United Nations shall inform all States Parties of the deposit of each instrument of accession.

5. It is understood that, when an instrument of accession is deposited on behalf of any State Party, the State Party will be in a position under its own law to give effect to the terms of this Protocol.

6. This Protocol shall continue in force as between the Tribunal and every State Party which has deposited an instrument of accession for so long as that State Party remains a State Party to the Convention, or until a revised Protocol has been approved by a meeting of States Parties and that State Party has become a party to the revised Protocol.

7. The Registrar may conclude with any State Party or States Parties supplementary agreements adjusting the provisions of this Protocol so far as that State Party or those States Parties are concerned. These supplementary agreements shall in each case be subject to the approval of a meeting of States Parties to the Convention.